ORDER OF THE COURT
27 February 1991 *

In Case C-126/90 P,

Pedro Bocos Viciano, represented by Eugenio Carbonell Serrano, of the Valencia Bar, with an address for service in Luxembourg at the Chambers of Catherine Thill-Kamitaki, Avocat, 17 Boulevard Royal,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities of 22 February 1990 in Case T-72/89 between the Commission of the European Communities and Pedro Bocos Viciano requesting the Court of Justice to quash that judgment

the other party to the proceedings being:

Commission of the European Communities, represented by Miguel Díaz-Llanos La Roche, Legal Adviser, and Daniel Calleja Crespo, a member of its Legal Department, both acting as Agents, with an address for service in Luxembourg at the office of Guido Berardis, also a member of the Commission's Legal Department, Wagner Centre, Kirchberg, that party contending that the appeal should be dismissed in its entirety,

THE COURT,

composed of: O. Due, President, G. F. Mancini, T. F. O'Higgins, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias and M. Díez de Velasco (Presidents of Chambers), Sir Gordon Slynn, C. N. Kakouris, R. Joliet, F. A. Schockweiler, F. Grévisse, M. Zuleeg and P. J. G. Kapteyn, Judges,

Advocate General: F. G. Jacobs,
Registrar: J.-G. Giraud,

* Language of the case: Spanish.

having regard to Article 119 of the Rules of Procedure,

having regard to the Report of the Judge-Rapporteur and after hearing the views of the Advocate General,

makes the following

Order

1 By an application lodged at the Registry of the Court of Justice on 2 May 1990, Mr Pedro Bocos Viciano brought an appeal under Article 49 of the Statute of the Court of Justice of the EEC and the corresponding provisions of the Statutes of the Court of Justice of the ECSC and the EAEC against the judgment of 22 February 1990 by which the Court of First Instance dismissed his application for the annulment of the Commission's decision not to offer him a post after he had been put on the reserve list for assistants of Spanish nationality drawn up by the Selection Board in Competition COM/B/488, for recognition of his right to be given employment, for an order requiring the Commission to inform him of the results of the medical examination carried out and, finally, for an order requiring the Commission to pay compensation.

2 In dismissing the application of Mr Bocos Viciano as inadmissible, the Court of First Instance pointed out, in accordance with the objection raised by the Commission, that before bringing the matter before the Court of First Instance and contrary to Article 91(2) of the Staff Regulations of Officials of the European Communities he had failed to submit to the appointing authority the complaint provided for by Article 90(2) of those regulations.

3 In support of his appeal, the appellant calls in question the conduct of the procedure before the Court of First Instance and the lawfulness of the grounds upon which that court based its judgment.

The alleged irregularity of the procedure before the Court of First Instance

4 Mr Bocos Viciano contends that the Court of First Instance ought to have reserved for final judgment the objection of inadmissibility raised by the Commission and that that objection had not been properly notified to a person authorized to receive such notification, and he complains that he had been requested to regularize his application by having it signed by a lawyer, whereas he, in his capacity as a lawyer, was entitled to submit it himself.

5 None of those submissions can be accepted.

6 In the first place, it was for the Court of First Instance to decide whether or not the proper administration of justice justified immediate adjudication upon the objection of inadmissibility raised by the Commission or postponement of such adjudication until final judgment.

7 Secondly, it is clear from the judgment of the Court of First Instance and from the documents before the Court that the Court Registry did inform the lawyer whose address the appellant had chosen as his address for service in Luxembourg of the objection of inadmissibility and that the document acknowledging such notification had been signed on 17 May 1989 by that lawyer's clerk.

8 Finally, no plea of an absolute bar to the application, based on the form in which it was submitted, has been pleaded and at the Court's request Mr Bocos Viciano arranged that he was properly represented by a lawyer. The fact that he considers that he could have signed his application himself is therefore irrelevant as far as the question of the proper conduct of the procedure before the Court of First Instance is concerned.

The question whether the contested judgment is well founded

9 The Court of First Instance found that the appellant had not submitted a complaint within the period specified in Article 90(2) of the Staff Regulations. The appellant claims, however, that a document attached as an annex to his appeal proves the existence of the complaint.

10 This submission may be examined by the Court only if it can be assumed that the document was submitted to the Court of First Instance. Even if that assumption is correct, the document in question is a letter dated 29 July 1988 from the head of the Commission's recruitment division concerning the results of Open Competition COM/B/612 and cannot be regarded as proof of the existence of a complaint, within the meaning of Article 90(2) of the Staff Regulations, against the decision not to offer him a post, which Mr Bocos Viciano alleged was taken by the Commission and which he contested before the Court of First Instance.

11 Mr Bocos Viciano also contends that 'since his application was directly connected with the outcome of Competition COM/B/612, the procedure set out in Article 173 of the Treaty ought to have been followed'.

12 In making this claim, the appellant is arguing that his application to the Court of First Instance did not need to be preceded by a complaint as provided for by Articles 90 and 91 of the Staff Regulations.

13 In rejecting that submission this Court need only point out that, although decisions of selection boards may be submitted directly to the Court (judgment of 14 June 1972 in Case 44/71 *Marcato* v *Commission* [1972] ECR 427), the proceedings before the Court of First Instance related to the failure to appoint Mr Bocos Viciano to a post, even though his name was included on the reserve list for Competition COM/B/488, and not to the results of any other competition, that this Court has consistently held that Articles 90 and 91 of the Staff Regulations apply not only to those who are officials but also to candidates for a post (order of 23 September 1986 in Case 130/86 *Du Besset* v *Council* [1986] ECR 2619) and that, consequently, as was pointed out by the Court of First Instance, Mr Bocos Viciano's application was governed by Article 179 of the Treaty relating to disputes between the Community and its servants and not by Article 173.

14 The appeal must therefore be dismissed as clearly unfounded, in accordance with Article 119 of the Rules of Procedure, without its being necessary to rule on the objections of admissibility which the Commission has raised against it.

Costs

15 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Under Article 122 of those rules, Article 70 does not apply to appeals brought by officials or other servants of the institutions. Since Mr Bocos Viciano has failed in his submissions, he must be ordered to pay the costs of the present proceedings.

On those grounds,

THE COURT

hereby orders as follows:

(1) The appeal is dismissed;

(2) Mr Bocos Viciano is ordered to pay the costs of the present proceedings.

Delivered in open court in Luxembourg on 27 February 1991.

J.-G. Giraud
Registrar

O. Due
President